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June 14, 1995

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Comments To Second Notice of Proposed Rule Making
Interconnection and Resale Obligations Pertaining to
Commercial Mobile Radio Services — CC Docket No. 94-54

Dear Mr. Caton:

Enclosed are an original and nine copies of the comments of PCS PRIMECO, L.P.
in the proceeding captioned above.

Please direct any questions you may have to me.

Very truly yours,



William L. Roughton, Jr.
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Arlington, Virginia 22201
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BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

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JUN 14 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Interconnection and Resale Obligations)
Pertaining to Commercial Mobile Radio Stations)
)

CC Docket No. 94-54

To: The Commission

DOCKET FILE COPY ORIGINAL

COMMENTS OF PCS PRIMECO, L.P.

William L. Roughton, Jr.
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Its Attorney

June 14, 1995

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SUMMARY

PCS PRIMECO, L.P. (“PCS PRIMECO”) believes that the Commission’s Second Notice of Proposed Rule Making (“*Second NPRM*”) represents a significant step towards establishing a regulatory structure for Commercial Mobile Radio Services (“CMRS”) which enhances competition rather than legal gamesmanship. Generally, the proposals set forth in the *Second NPRM* reflect a commitment by the Commission to allow market forces to regulate the relationships among CMRS carriers. PCS PRIMECO supports this approach to CMRS regulation, since flexible, market-driven oversight of the industry will yield the most rapid and economical delivery of service to the public.

PCS PRIMECO agrees with the Commission’s tentative conclusion that the record in this proceeding does not support imposition of a general interstate interconnection requirement on CMRS providers at this time. Given the number and variety of CMRS services that will be brought to market over the next few years, negotiations among the parties are far more likely to achieve optimal interconnection arrangements. Further, the drive to reduce interconnection costs will eliminate the possibility that LEC-affiliated CMRS providers will deny interconnection to other CMRS providers.

In addition, PCS PRIMECO supports the Commission’s finding that the record does not justify the adoption of rules governing roaming in CMRS. There is no evidence that cellular carriers have refused to enter into roaming agreements under the current regulatory scheme, and hence there is no reason to believe that cellular carriers will deny new carriers roaming access. PCS PRIMECO also agrees that the existing cellular resale obligation should be extended to all CMRS providers, “unless there is a showing that

permitting resale would not be technically feasible or economically reasonable for a specific class of CMRS providers.”

Finally, PCS PRIMECO concurs with the FCC’s tentative finding that the reseller switch proposal suggested by certain commenting parties “should not be generally imposed upon CMRS providers at this time.” Rejection of the reseller switch proposal is justified on a number of grounds. Most significantly, it would work to the disadvantage of licensees and the public in favor of resellers that have (1) incurred none of the costs associated with acquiring spectrum; (2) avoided the substantial expenditures associated with the construction and expansion of networks; and (3) assumed none of the build-out or other CMRS licensee obligations. Moreover, the adverse effects of the reseller switch proposal will not be offset by any countervailing benefits. As the Commission has noted, the eventual multiplicity of CMRS providers in the market will obviate the need to employ switch-based resale as a means to check inefficient or anticompetitive behavior.

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In the Matter of)
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Pertaining to Commercial Mobile Radio Stations)
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To: The Commission

COMMENTS OF PCS PRIMECO, L.P.

PCS PRIMECO, L.P. ("PCS PRIMECO"), a winning bidder for eleven MTA licenses in the A/B band auction, hereby files the following comments in the matter captioned above:

I. INTRODUCTION AND OVERVIEW

This proceeding¹ grows out of a broader undertaking by the Commission to evaluate the Commercial Mobile Radio Services ("CMRS") market as a result of revisions made to the Communications Act by Congress in the Omnibus Budget Reconciliation Act of 1993.² In amending Section 332 of the Act, Congress set out to replace the patchwork of

¹ In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, Second Notice of Proposed Rule Making, FCC 95-149 (released April 20, 1995) (*Second NPRM*).

² Commercial mobile radio service is defined as "any mobile service . . . that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public." 47 U.S.C. § 332(d)(1). CMRS providers are treated as common carriers under the Communications Act, except that the Commission may
(continued...)

regulation that had developed for mobile services over the years with a more uniform system of regulation that would still afford the FCC the flexibility to fashion appropriate levels of regulation for mobile service providers.³ In earlier proceedings, the Commission determined that Congress had two objectives in mind when it amended Section 332:

First, Congress sought to ensure that similar services would be subject to consistent regulatory classification. Second, Congress sought to impose a reasonable level of regulation for CMRS providers, and to avoid unwarranted regulatory burdens for any mobile radio licensees classified as CMRS providers.⁴

The Commission concluded in the *CMRS Second Report* that implementing a policy of even-handed regulation under Section 332 would promote competition and innovation by focusing competitors' efforts on customer needs and the requirements of the marketplace rather than regulatory strategies and gamesmanship.⁵ This proceeding continues the Commission's inquiry into issues relating to interconnection of CMRS systems and also initiates a rule making to examine the resale obligations of CMRS providers.

² (...continued)
forebear from applying the provisions of Title II other than Sections 201, 202 and 208. *See* Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, GEN. Docket No. 93-252, 9 FCC Rcd 1411, 1478-1480 (1194) (*CMRS Second Report*).

³ *See* 47 U.S.C. §§ 203, 204, 205, 211, 212, 214, 303(n), 332.

⁴ In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-95, Notice of Proposed Rule Making and Notice of Inquiry, 9 FCC Rcd 5408, 5411 (1994) (*Equal Access NPRM; Interconnection NOI*).

⁵ *CMRS Second Report* at 1418-1420.

PCS PRIMECO supports the Commission's efforts to harmonize the regulatory framework for CMRS. Over the years, a variety of regulatory schemes were created, many on an *ad hoc* basis, to regulate various types of mobile services.⁶ The acceleration of technological change in mobile radio communications and regulatory policy to permit more flexible use of existing spectrum soon produced a situation in which mobile carriers providing substantially similar services to the public found themselves subject to quite different regulatory regimes. The differences among these regulatory schemes many times skewed a carrier's ability to compete in ways that had nothing to do with service quality or innovation. By imposing a coherent and consistent system of regulation on mobile services that are similar in nature, the Commission will encourage CMRS providers to devote their energy to competition and innovation rather than regulatory strategies which produce no new products or services whatsoever.

Unquestionably, all wish to create a regulatory environment that will foster ubiquitous wireless services over the next decade. However, it is no exaggeration to observe that a great many regulatory schemes have poorly anticipated the future. By contrast, the marketplace has generally functioned more efficiently in separating fads from products and services offering enduring value to the public. Reliance on the market, then, to the degree allowed by the Communications Act is the surest means of advancing the public interest.

⁶ For example, SMR, as a private radio service, was not subject to state regulation. Land Mobile Radio Service, 46 FCC 2d 752, 767 (1974). Until very recently cellular radio carriers, though fully capable of delivering dispatch-type services, were barred from doing so. In the Matter of Eligibility for the Specialized Mobile Radio Services *et al.*, Gen. Docket No. 94-90, FCC 95-98 at ¶ 29 (released March 7, 1995). In paging, an arguably artificial distinction was drawn between paging carriers who were affiliated with LECs and those who were not. Public Land Mobile Service, 99 FCC 2d 311, 312-13 (1984).

Overall, the proposals contained in the *Second NPRM* reflect a commitment by the Commission to permit market forces to regulate the relationships among CMRS carriers. PCS PRIMECO supports this approach to CMRS regulation because it believes flexible, market-driven regulation of the industry will result in the most rapid and economical delivery of service to the public. Consequently, PCS PRIMECO encourages the Commission to maximize its reliance on market forces as the regulating mechanism for CMRS.

II. CMRS TO CMRS INTERCONNECTION

In the *Interconnection NOI*, the Commission undertook to explore whether interstate interconnection requirements would encourage the growth of diverse and competitive mobile services as well as promote regulatory symmetry for CMRS.⁷ Many commenters argued that an inquiry into whether the Commission should require CMRS carriers to provide interstate interconnection to other CMRS providers was premature. Several others went further and argued that such an inquiry should wait until the CMRS industry developed sufficiently to create a record on which such an inquiry could proceed.⁸ More fundamentally, a number of commenters opposed the imposition of any interconnection obligation at all, arguing that the state of competition and the lack of bottleneck facilities make such a requirement unnecessary and perhaps even unwise.⁹

⁷ *Interconnection NOI*, 9 FCC Rcd at 5458.

⁸ *See, e.g.*, Comments of Nextel at 18-19.

⁹ *See, e.g.*, Comments of CTIA at 25-26.

In weighing these comments — as well as comments supporting the imposition of interconnection requirements¹⁰ — the Commission concluded that the record offered insufficient support for proposing a general interstate interconnection obligation. In addition, because all CMRS carriers can interconnect with each other through the LEC landline network, the Commission did not view market conditions as indicating a need for a generalized CMRS interconnection requirement at this time.¹¹

PCS PRIMECO supports the Commission's conclusion that prescribing an interconnection requirement for CMRS is inappropriate during this period of significant change in the CMRS industry. Last winter almost 100 new broadband PCS licenses were auctioned off, creating many new entrants into the mobile services arena. These new mobile service providers, as well as the others who will follow from the remaining PCS auctions, will come to market with a variety of plans for delivering mobile services to the public. The variety of their approaches to mobile services will necessarily translate into diverse requirements not only for infrastructure and terminals, but also for network services including access and interconnection. To prescribe an interstate interconnection regime at this early date is at best an exercise in speculation and at worst courts the risk that the innovation the Commission and Congress have strived to encourage will instead be stifled by a set of rules too inflexible to accommodate the unforeseen needs of the new wireless carriers.

¹⁰ See, e.g., Comments of Pacific Bell at 16-18.

¹¹ *Second NPRM* at ¶ 29.

The Commission has recognized that in the rapidly changing environment of mobile services, the more practical course is to let the market determine the optimal interconnection arrangements. Negotiations among the parties are far more likely to achieve the best result in this setting than would a regulatory ukase. As the FCC notes, should the Mmarket fail to provide the interconnection needed by certain carriers, the FCC's complaint procedure is available to a carrier that believes itself injured.¹²

Furthermore, the need to reduce costs on all fronts for competitive purposes will determine marketplace behavior.¹³ As a result, the drive to reduce the cost of interconnection will obviate the possibility that LEC-affiliated CMRS carriers will deny interconnection to other CMRS providers. Contrary to the incentives outlined by the Commission in the *Second NPRM*,¹⁴ LEC-affiliated carriers will have the same incentives as others to interconnect with independent CMRS providers. When CMRS-to-CMRS calling volumes grow beyond the point at which it is economical for CMRS carriers to reach each other's customers through a common intermediary like an LEC, any CMRS carrier — including an LEC-affiliated one — that chooses not to interconnect with other CMRS providers will simply find its interconnection costs higher than those paid by CMRS carriers

¹² *Second NPRM* at ¶ 38.

¹³ Currently, there are two existing carriers in each cellular market, with a growing ESMR market presence. In addition to existing SMR carriers, the FCC has just completed the auctions to award two additional licenses for PCS service in each MTA. In the fall the Commission will auction off an additional four PCS licenses for each BTA. Within a relatively short period of time as many as ten wireless providers may be competing in each market to provide broadband wireless services.

¹⁴ *Second NPRM* at ¶¶ 32-43.

that do choose to interconnect their systems. Far quicker and more punitive than any regulatory remedy will be the judgment of that carrier's customers.¹⁵

III. ROAMING

The *Interconnection NOI* requested comment on whether the Commission should allow some or all CMRS providers to permit subscribers of other CMRS providers to use their systems on a roaming basis, and whether it should require technical compatibility of equipment. The Commission also asked if interconnection obligations would be necessary to ensure that CMRS carriers provide end users of various CMRS services and other carriers with access to mobile location data bases and to routing information such as that contained in cellular carrier's Home Location Register (HLR) and Visited Location Register (VLR).¹⁶

Initially, it is important to note that many of the new PCS systems will employ air interfaces that are incompatible not only among themselves but also with other existing

¹⁵ In this vein, the Commission's statement that it "... would find LEC investment in, and affiliation with, the party denying interconnection an important factor in assessing whether such denial was motivated by an anticompetitive animus" seems to miss the mark. *Second NPRM* at ¶ 43. The past ten years of wireless experience have shown that CMRS is not a niche business that an LEC investor can afford to disadvantage to the profit of any of its existing businesses. Indeed, wireless assets now account for a substantial part of the market value of virtually every large local exchange company in the country. The financial consequences of mismanaging such substantial shareholder assets would have disastrous effects on these companies. Consequently, PCS PRIMECO feels strongly that the interconnection policy of *any* CMRS carrier should be evaluated by the Commission, if at all, as the act of the CMRS provider alone, and that no sinister motive should be attached to the bare fact of its pedigree.

¹⁶ *Interconnection NOI*, 9 FCC Rcd at 5464-465.

wireless carriers like cellular and ESMR.¹⁷ Consequently, it is hard to foresee how these systems will eventually develop relationships with each other, whether through interconnection or some other means. A set of standards imposed today, therefore, may prove to be unhelpful — or even harmful — to the market conditions prevailing in the coming years.

While there is no simple solution to the question of intersystem roaming, the proposal most often put forward is the use of a dual-mode terminal that will allow a customer to operate on one system in his or her home market and, when roaming in a “foreign” market, to use the existing AMPS network there. Roaming on the AMPS system is achieved through a set of intercarrier agreements that permit validation of the roaming customer and provide a mechanism for payment of roaming charges among the carriers. These arrangements can be extended to embrace new carriers who are willing to abide by the conventions developed over the last ten years and whose customers have phones with an AMPS air interface.

In principle, PCS PRIMECO believes that no customer with a terminal capable of receiving service from an AMPS network should be denied access so long as the customer’s home carrier will abide by the industry’s roaming conventions and enter into the necessary intercarrier agreements. However, PCS PRIMECO sees no need for the Commission to establish rules to regulate this system beyond those already in place. There is no evidence that cellular carriers have refused to enter into roaming agreements, and hence there is no reason to believe that they will deny roaming access to new carriers. In other

¹⁷ Also note that PCS, cellular, and ESMR each operate in different frequency bands and use different bandwidths for their channels. A cellular channel is 30 kHz wide and an ESMR channel is 25 kHz (12.5 kHz in the case of 900 MHz SMR). The new PCS carriers may choose from a variety of modulation options: upbanded NAMPS, DCS 1800, various types of CDMA and others. Each of these has its own requirements for channel size.

words, cellular carriers already have sufficient incentive to accommodate new roaming traffic, since it will provide them with a new source of revenue.

For these reasons, PCS PRIMECO supports the Commission's finding that the record does not warrant adopting rules governing roaming service.

IV. RESALE

The *Interconnection NOI* requested comment on whether a resale obligation patterned after the cellular resale model should be imposed on all CMRS providers. The cellular resale policy requires cellular carriers to permit unrestricted resale of their services, except that they can deny resale capacity to their facilities-based competitors starting five years after grant of the competitor's construction permit.¹⁸

Consistent with the views of the majority of commenters, the Commission tentatively concluded that the existing cellular resale obligation should be extended to all CMRS providers, "unless there is a showing that permitting resale would not be technically feasible or economically reasonable for a specific class of CMRS providers."¹⁹ This decision was grounded, in part, on the premise that prohibiting resale restrictions would provide a means of policing price discrimination, mitigate head-start advantages and provide some

¹⁸ See Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies, Notice of Proposed Rule Making and Order, CC Docket No. 91-33, 6 FCC Rcd 1719, 1724 (1991); Petition for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies, Report and Order, CC Docket No. 91-33, 7 FCC Rcd 4006, 4008 (1992), *aff'd sub nom.* Cellnet Communications v. FCC, 965 F.2d 1106 (D.C. Cir. 1992).

¹⁹ *Second NPRM* at ¶ 83.

degree of secondary (*i.e.*, retail) market competition.²⁰ It was also the Commission's tentative view that most CMRS licensees would be able to comply with the policy at "minimal expense and [with] no technical programs."²¹ PCS PRIMECO generally concurs with these findings.

PCS PRIMECO also agrees with the Commission's tentative decision to adopt an exception to the resale requirement, allowing CMRS providers to deny resale capability to fully operational facilities.²² This policy will enable a new entrant to use resale temporarily as a means to enter a market quickly, but only for a reasonable period of time while the entrant constructs its own system.

An important policy consideration underlying the resale restriction is to "discourage the carrier requesting resale from its competitor from permanently relying on its competitor's facilities and efforts."²³ This reasoning also provides a compelling basis for rejection of the ill-conceived "reseller switch proposal" advanced by a small minority of commenters in this proceeding.²⁴ Under this proposal, CMRS providers would be required to allow resellers to install their own switching equipment between the cellular network's mobile telephone switching office and the facilities of local exchange carriers and interexchange carriers. After reviewing the comments on both sides, the Commission

²⁰ *Id.* at ¶ 84.

²¹ *Id.* at ¶ 85.

²² *Id.* at ¶ 90.

²³ Petition for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies, CC Docket No. 91-33, Report and Order, 7 FCC Rcd 4006, 4007 (1992).

²⁴ *Second NPRM* at ¶ 95.

tentatively concluded that the reseller switch proposal “should not be generally imposed upon CMRS providers at this time.”²⁵ PCS PRIMECO submits that this was the correct decision from all relevant perspectives.

Perhaps most fundamentally, adoption of the reseller switch proposal would result in an extremely intrusive form of regulation that would work to the disadvantage of licensees and the public in favor of resellers that have (1) incurred none of the costs associated with acquiring spectrum;²⁶ (2) avoided the substantial expenditures associated with the construction and expansion of networks; and (3) taken on none of the build-out or other CMRS licensee obligations. Having assumed none of the financial and other risks, these resellers would nonetheless be able to siphon off customers and revenues — revenues that licensees might otherwise use to expand their systems and better serve the public. In this regard, it is important to distinguish the reseller switch proposal from typical resale, where the underlying carrier does not lose business to another carrier in the literal sense since the reseller serves to expand the carrier’s wholesale business.²⁷ By contrast, the reseller switch proposal will simply result in a drain on the licensee’s business, perhaps seriously undermining the CMRS provider’s viability in what will clearly be an intensely competitive environment.

²⁵ *Id.*

²⁶ These costs are substantial by any measure. Over \$7 billion was spent in the A/B band auction alone, \$1.1 billion of which was attributable to PCS PRIMECO’s acquisition of 11 licenses.

²⁷ *See* Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, 60 FCC 2d 261, 298 (1976).

Rejection of the reseller switch proposal is warranted on a number of other grounds. The Commission recognizes that CMRS providers may incur costs to satisfy a reseller switch requirement, although it notes that there is a divergence of views on this point.²⁸ But there is no dispute that the reseller switch proposal calls for carriers to unbundle their services and charge cost-based rates.²⁹ This will require the implementation of a regulatory scheme which is extremely burdensome to administer from the perspective of both the industry and the Commission. The Commission, for good reason, has never felt the need to impose an intrusive form of regulation on the mobile services industry. Given the growth of competition in the CMRS market, there is clearly no justification for adoption of such a draconian scheme at this stage of the industry's development.³⁰ Moreover, the intricate regulatory structure endorsed by parties in favor of the reseller switch proposal will undoubtedly increase CMRS carriers' costs.

The reseller switch proposal also raises considerable technical problems. As noted by AirTouch:

Even in its simplest form, implementation of a blanket policy would pose numerous problems for cellular networks. For example, resellers may seek to interconnect their switches to more than one cellular provider, and shift customers unpredictably from system to system to take advantage of differences in rate charges at different times of the day. Utilization planning would become impossible, and blockage in overburdened networks would increase. Failures in traffic engineer-

²⁸ *Second NPRM* at ¶ 96.

²⁹ Comments of National Cellular Resellers Association ("NCRA") at 17.

³⁰ It is noteworthy that NCRA's proposal is premised on the existence of "carrier bottleneck control and market power." Comments of NCRA at 17. CMRS providers possess neither of these attributes.

ing or software design could also result in a significant and sustained disruption of the entire cellular network.³¹

None of these substantial concerns was adequately put to rest in reply comments filed by the resale switch proponents.

PCS PRIMECO submits that the above-described significant detriments to the industry and the public interest are not offset by any countervailing benefits. As the Commission notes, the multiplicity of CMRS providers that will soon be present in the industry obviates the need to employ switch-based resale as a means to check inefficient or anticompetitive behavior.³² This same reasoning also invalidates claims that adoption of the reseller switch proposal will result in increased service offerings and lower prices. With as many as nine broadband CMRS providers (two cellular, six PCS, and perhaps one ESMR) aggressively competing against each other in the various markets, it is more than likely that a fully array of services will be rolled out at competitive prices. Hence, it is doubtful that switch-based resellers will have anything unique to offer.

The reseller switch proposal was a bad idea when there were only two cellular carriers in each market. With the addition of new broadband CMRS competitors it is even less supportable. PCS PRIMECO accordingly supports the Commission's decision not to adopt the reseller switch proposal at this time.

³¹ Comments of AirTouch Communications, Inc. at 24.


³² *Second NPRM* at ¶ 96.

V. CONCLUSION

PCS PRIMECO strongly encourages the FCC to establish a regulatory framework for CMRS under which competitive behavior is driven by market forces rather than regulatory gamesmanship. To this end, PCS PRIMECO urges the FCC to (1) refrain from imposing an interconnection requirement on CMRS providers at this time; (2) conclude that the record in this proceeding does not warrant the adoption of roaming rules for the CMRS service; (3) extend the existing cellular resale obligation to all CMRS providers absent a showing that resale would not be technically feasible or economically reasonable for a specific class of CMRS providers; (4) adopt a limited exception to the CMRS resale requirement, enabling new entrants to use resale temporarily as a means to enter the market quickly; and (5) reject the "reseller switch proposal" advanced by a small minority of commenters in this proceeding.

Respectfully submitted,

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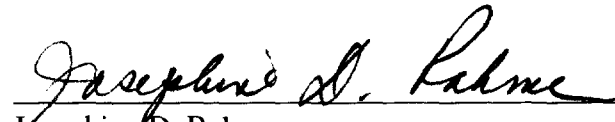
June 14, 1995

CERTIFICATE OF SERVICE

I hereby certify that I have this 14th day of June, 1995, mailed postage prepaid, a copy of the foregoing Comments to the following:

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